



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/207,188	12/08/1998	MILAN S. BLAKE	2016-4005US1	6452

7590 09/23/2003

MORGAN & FINNEGAN
345 PARK AVENUE
NEW YORK, NY 10154

EXAMINER

DEVI, SARVAMANGALA J N

ART UNIT PAPER NUMBER

1645

DATE MAILED: 09/23/2003

32

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.
09/207,188

Applicant(s)

Blake et al.

Examiner
S. Devi, Ph.D.

Art Unit
1645



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Sep 9, 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on Sep 9, 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see NOTE below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Attachment.

3. ☐ Applicant's reply has overcome the following rejection(s):

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because:

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None

Claim(s) objected to: None

Claim(s) rejected: 80, 81, and 83-93

Claim(s) withdrawn from consideration: 73-79

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

10. ☐ Other:

S. DEVI, PH.D.
PRIMARY EXAMINER
ART UNIT 1645

ATTACHMENT TO ADVISORY ACTION

Item 2.


A. The after-final amendment filed 09/09/03 is a non-compliant amendment under 37 C.F.R. 1.121 because of the incorrect status of claims 73-79 indicated under the listing of claims. Applicants have requested cancellation of claims 73-79 at the top of page 3 of the after-final amendment, yet list these as 'withdrawn' claims, as opposed to 'canceled' claims under the listing of claims.

B. The after-final amendment filed 09/09/03 is a non-compliant amendment under 37 C.F.R. 1.121 because several additions or deletions made, for example, to claims 80, 89, 90 and 93 have not been identified or marked by underlining or parentheses, as required. For example, line 4 and the last line of claim 80 and line 2 of claims 89, 90 and 93, as amended, now recite 'conjugates' without identifying the change made to this limitation. Additionally, the previous limitation: 'comprising a polysaccharide component and a protein or protein fragment component' has been deleted from claim 80, as now amended. However, this deletion is not indicated to the Office by specific markings or parentheses.

The new amendments made to claims 80, 89, 90 and 93 raise new issues and would require further consideration and/or new search.

C. There is lack of action with regard to the required submission of a terminal disclaimer to overcome the rejection of record of claims 80, 81 and 83-93 under the judicially created doctrine of obviousness type double patenting over the US patent 5,866,135.

September, 2003


S. DEVI, PH.D.
PRIMARY EXAMINER